IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 504-DB of 2003
Date of decision: 23.2.2007

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Hari Lal

..APPELLANT

VS.

State of Punjab

..RESPONDENT

with **Criminal Appeal No. 583-DB of 2003**

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Dolu Sharma

..APPELLANT

VS.

State of Punjab

..RESPONDENT

Criminal Appeal No. 679-DB of 2003

***

Bijli

..APPELLANT

VS.

State of Punjab **..RESPONDENT**

Criminal appeal No.909-DB of 2003

Kallu Sharma and another

..APPELLANTS

VS.

State of Punjab

..RESPONDENT

and **Criminal Appeal No.489-DB of 2006**

Sabu Sharma

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Ajay Kaushik,Advocate
for the appellant Hari Lal.

Mr. S.S. Rana, Advocate
for the appellants Dolu Sharma and Sabu Sharma.

Mr. G.S. Kaura, Advocate
for the appellant Bijli.

Mr. J.S. Bains, Advocate
for the appellants Kallu sharma and Lallu Sharma.

Mr. S.S. Randhawa, Sr.DAG Punjab.

ARVIND KUMAR, J.

All the above-referred appeals are aftermath of judgment dated 17.5.2003 passed by Additional Sessions Judge, Ludhiana in Sessions Case No.76 of 31.8.2000, by virtue of which the appellants named above have been convicted under Sections 148, 302 read with Section 149 IPC and have sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- each under Section 148 IPC and in default of payment of fine, further imprisonment for six months has been awarded. All the appellants have been further sentenced to undergo life imprisonment under Section 302 read with Section 149 IPC. Each of them are further required to pay a fine of Rs.2000/- and in case of default, further imprisonment for six months has been awarded.

Since, all the above-referred petitions are against one judgment of the trial court, we propose to dispose of all of them by this common judgment passed in Crl. Appeal No.504-DB of 2003.

The prosecution allegations, in nutshell are that, all the appellants named above, on 10.5.2000 at about 7:30 a.m., formed an unlawful assembly, in the area of village Kalsia. Appellants Bijli, Dollu Sharma, Sabu Sharma were armed with lathis while the appellants Hari Lal was having a sota and appellants Lallu Sharma and Kallu Sharma were having kahi. They all went to the tube-well of Bhinder Singh(PW.5) where Amit Kumar (PW.3), his brother-in-law Makhan Yadav and Barinder Kumar (PW.4) were present. Appellant Bijli exhorted his accomplice to

caught hold of Makhan and he be not allowed to go. On this, appellant Kallu gave a kahi blow from its reverse side on the head of Makhan Yadav, appellant Lallu Sharma inflicted a kahi blow on the back side whereas appellants Sabu Sharma gave a lathi blow on left knee, Dolu Sharma gave a lathi blow on right leg, Hari Lal gave a lathi blow on left flank and appellant Bijli inflicted a lathi blow on right upper arm of Makhan Yadav. Thereafter all the appellants fled away from the spot with their respective weapons. According to the prosecution, the occurrence took place as Makhan Yadav, who was a contractor, was paying less amount of Rs.50/-, per killa to the appellants, as compared to the payment, he used to make to the other labourers.

On that very day, after the occurrence, Makhan Yadav was removed to General Hospital, Raikot, where emergency treatment was given to him by Dr. Harjinder Singh (PW.1). However, due to his condition, he was referred to General Hospital, Ludhiana. But, Makhan Yadav was got admitted in Arora Neuro Centre, Ludhiana where he was treated by Dr. Sanjay Bhalla (PW.2) upto 12.5.2000 and was discharged against medical advice. However, on 12.5.2000 on reaching the village,Makhan Yadav died.

A statement Ex.PD was made by Amit Kumar to the SI Mewa Singh (PW.9), which was made the basis of registration of first information report against the accused-appellants. SI Mewa Singh prepared the inquest report (Ex.PJ), took into possesion pair of rubber chappals, recovered from the spot, vide recovery memo Ex.PE. He also sent the dead body of Makhan Yadav to General Hospital, Raikot where autopsy was conducted by Dr. Pritpal Singh (PW.10) on 13.5.2000. On that very day, all the accused-appellants were arrested. Thereafter, on completion of usual formalities of investigations, final report under Section 173 Cr.P.C. was prepared against the accused and the same was filed in the Court for their trial.

Learned Illaqa Magistrate committed the case to the court of Sessions for trial of the accused-appellants, whereof the trial court framed the charge against the accused-appellants under Sections 148,302 read with Section 149 IPC.

To substantiate the charge against the accused-appellants, the prosecution examined as many as 10 witnesses viz. PW.1 Dr. Harjinder Singh, PW.2 Dr. Sanjay Bhalla, PW.3 Amit Kumar informant, PW.4

Varinder, PW.5 Bhinder Singh, PW.6 ASI Harjinder Singh, PW.7 Sukhdev Singh Patwari, PW.8 HC Piara Singh, PW.9 SI Mewa Singh, the investigating officer and PW.10 Dr. Pritpal Singh.

The accused-appellants when examined under Section 313 Cr.P.C. pleaded innocence and their false implication in this case. However, no evidence in defence was adduced by them.

After analyzing the evidence adduced by the prosecution, learned trial court vide the impugned judgment convicted and sentenced the accused in the manner indicated above, which has necessitated the accused-appellants to prefer the instant appeals.

We have heard learned counsel for the parties and with their assistance have also gone through the record carefully.

The FIR in this case had been lodged by PW.3 Amit Kumar on 12.5.2000. What mainly has been assailed is that there is delay of about 2 days in lodging the FIR and this time has been used for concocting a false case against the accused-appellants. There is no doubt that the FIR has been lodged after two days, however, if there is plausible explanation furnished by the witnesses for lodging the first information report at a later stage, the delay alone cannot be then pressed into service for getting an order of acquittal. In the instant case, Makhan Yadav (since deceased) had been initially removed to Civil Hospital, Raikot for treatment, whereupon PW.1 Dr. Harjinder Singh, after his examination and seeing his serious condition, referred him to Civil Hospital, Ludhiana at about 9:35 a.m. Admittedly, police station falls on the way while approaching Raikot. Earlier thereto also, it is evident from the statement of PW.3 Amit Kumar that after the occurrence one Shambhu was sent to call Sarpanch and that Sarpanch immediately telephoned the police station and the police had also reached the spot and even on their way to Raikot they had also informed the police and narrated the entire incident, but in return, the police directed them to take the injured to Arora Neuro Centre, Ludhiana indicating that they are also following them. It has also come in evidence of PW.3 Amit Kumar that Shambhu was also sent to police station even from the hospital, but they did not turn up despite the assurance given by them. Subsequently thereto also on 11.5.2000 Shambhu was again sent to the police station, Raikot, but the police had not shown any interest in registration of the case. Even a close

look to the statement of PW.1 Dr. Harjinder Singh of Civil Hospital, Raikot is also suggestive of the fact that he had also informed the police in writing about the arrival of injured Makhan Yadav on 10.5.2000 itself, before Makhan Yadav was referred to Civil Hospital, Ludhiana. These sequence of events are suggestive of the fact that the witnesses were keen to lodge the report immediately after the occurrence but there was an inaction on the part of the police in recording the statement of the complainant and registering a case against the accused persons. When the police themselves had not reacted promptly to the situation that does not lead to the conclusion that the witnesses were not truthful and they gained time purposely to concoct a false story. Therefore, it can easily be said that the delay, if any, in lodging the FIR is satisfactorily explained and it does not affect the merits of the case.

The case of the prosecution mainly rests on the testimonies of PW.3 Amit Kumar and PW.4 Varinder, who have given the entire sequence of the occurrence, as to the manner in which the accused-appellants had caused injuries to Makhan Yadav, with their respective weapons, to redress their grievance for having paid Rs.50/- per killa less, as labour charges, for harvesting the wheat crop standing at the fields of Binder Singh. Their testimonies have been assailed on account of their relationship with the deceased, as PW.3 Amit Kumar is brother-in-law (saala) of the deceased whereas PW.4 Varinder Kumar is married to the sister of wife of the deceased. But it is not the absolute law that the evidence of relation witnesses is not entitled to any weight but this very circumstance would add to the value of their evidence because they would be interested in ensuring that the real culprit responsible for the murder be punished and not the innocent person. Their statements are corroborative on material particulars. They were subjected to cross-examination. They stood firm to their stand.

The presence of PW.3 Amit Kumar and PW.4 Varinder Kumar has also been questioned on two counts, firstly, on account of their non-intervention in order to save Makhan Yadav and, secondly, due to non-mentioning of their names by PW.1 Dr. Harjinder Singh, who deposed that injured Makhan Yadav was brought by Bhinder Singh and Hira Lal Yadav, thus, their names are conspicuous by their absence at the time of

occurrence. The contentions is meritless. The accused were armed with kahis and lathis and in that situation, it was not expected from the witnesses to intervene as the element of self preservation is supreme in human being. Similar was the situation in **Hari Singh M. Vasava Vs. State of Gujarat, 2002 Supreme Court Cases (Crl.) 654,** and it was held by the Apex Court that merely because the eye witnesses failed to intervene to save the deceased cannot be made a ground to reject their testimony. Further, PW.5 Binder Singh, in his statement, has clearly averred that Amit Kumar was also with him when deceased was taken to Raikot and Ludhiana. It is not necessary for the Doctor to name all the persons who had accompanied the injured. Thus, merely by non mentioning of their names, it cannot be presumed that they had not accompanied the deceased in the hospital. Such an assumption is not referable to any legal or factual presumption.

The post-mortem report (Ex.PM) proved by PW.10 Dr. Pritpal Singh corroborates the ocular account so far the time of the occurrence and the weapon used are concerned. The cause of death, as opined by PW.10, was shock and haemorrhage as a result of injuries described, which were sufficient to cause death in ordinary course of nature. There is nothing to suggest that the discharge of Makhan Yadav from Arora Neuro Centre, against the medical advice, in any way, had contributed to his death. No doubt PW.2 Dr. Sanjay Bhalla, who treated Makhan Yadav at Arora Neuro Centre, in his cross-examination, has stated that the injury on the forehead was caused with a sharp edged wound or cut one, but it seems that there was some misconception or an error, which he has rectified in the second breath by stating that the said injury could be caused by blunt weapon or by fall on hard surface. This fact has further been clarified by PW.10 Dr. Pritpal Singh while admitting in his cross-examination that the lacerated wound was caused by blunt weapon like dang and soties, which rather supports the case of the prosecution.

Coming to the nature of offence, it cannot be said that it is rule of universal application that whenever one blow is given, Section 302 IPC is ruled out. It would depend upon the facts of each case. In the instant case, instantaneous death could be caused if kahi blow was given by sharp side. However, the blow though had been given on vital organ i.e. forehead but with reverse side. The blow was not repeated. Other injuries are abrasions

and bruises, which could have occurred due to fall and dragging, as has been opined by the doctor. Thus, inevitable conclusion is that the case is covered by Section 304-I IPC and not under Section 302 IPC. The conviction of the appellants is accordingly altered to Section 304-I read with Section 149 IPC from that of Section 302 read with Section 149 IPC. Accordingly, the sentence of life imprisonment awarded to the appellants, is altered to that of rigorous imprisonment for 10 years. However, their conviction and sentences awarded under Section 148 IPC as also the sentences of fine imposed upon the appellants shall remain intact.

With the above modification, the instant appeals are disposed of.

(ARVIND KUMAR)
JUDGE

February 23,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 583-DB of 2003
Date of decision: 23.2.2007
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Dolu Sharma

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. S.S. Rana, Advocate**
for the appellants Dolu Sharma.

Mr. S.S. Randhawa, Sr.DAG Punjab.

ARVIND KUMAR, J.

For orders, see Crl. Appeal No. 504-DB of 2003.

(ARVIND KUMAR)
JUDGE

February 23,2007 **(MEHTAB S. GILL)**
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 679-DB of 2003
Date of decision: 23.2.2007

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Bijli

..APPELLANT

VS.

State of Punjab **..RESPONDENT**

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. G.S. Kaura, Advocate**
for the appellant Bijli.

Mr. S.S. Randhawa, Sr.DAG Punjab.

ARVIND KUMAR, J.

For orders, see Crl. Appeal No. 504-DB of 2003.

(ARVIND KUMAR)
JUDGE

February 23,2007 **(MEHTAB S. GILL)**
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Kallu Sharma and another

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CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. J.S. Bains, Advocate**
for the appellants Kallu Sharma and Lallu Sharma.

Mr. S.S. Randhawa, Sr.DAG Punjab.

ARVIND KUMAR, J.

For orders, see Crl. Appeal No. 504-DB of 2003.

(ARVIND KUMAR)
JUDGE

February 23,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.489-DB of 2006
Date of decision: 23.2.2007

Sabu Sharma

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. S.S. Rana, Advocate**
for the appellant Sabu Sharma.

Mr. S.S. Randhawa, Sr.DAG Punjab.

ARVIND KUMAR, J.

For orders, see Crl. Appeal No. 504-DB of 2003.

(ARVIND KUMAR)
JUDGE

February 23,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**